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09/656,289	09/06/2000	Nouri E. Hakim	4009.016	9451

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EXAMINER

MAI, TRI M

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 11/24/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/656,289

Applicant(s)

HAKIM, NOURI E.

Examiner

Tri M. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) 17-50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 14-16 and 51-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Priority***

1. Applicant's claim for priority of 60/152655 is acknowledged. However, the applications upon which priority is claimed fails to provide adequate support under 35 USC 112 for showing that liquid cannot emerge from the nipple into the surrounding environment.
2. As previously set forth, applicant's claim for priority of applications French Design Patent No. 976, 785, U.S. Design Patent 29/119,049 and US Design Patent 29/088, 360 is also acknowledged. However, the applications upon which priority is claimed fails to provide adequate support under 35 U.S.C. 112 for claims 1-15, 51 and 52 of this application. *Inter alia*, these applications fail to disclose a hole at the top of the nipple cover and the cover member.

### ***Election/Restrictions***

3. Claims 17-50 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to non-elected invention as set forth Office Action No. 8.

### ***Claim Rejections - 35 USC § 112***

4. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is confusing what comprises the invention. The claim defines a cover, but the body of the claim positively recites structural elements of a nipple, i.e., the bottom surface of the bottom compresses with the nipple. Is the invention a cover or a cover/nipple combination? Applicant is required to state whether a subcombination or a combination is intended, and amend the claim to clarify the matter.

***Claim Rejections - 35 USC § 102***

5. Claims 1-11, 14-15, and 53 are rejected under 35 U.S.C. 102(a) as being anticipated by Shefflin (5,878,898). Shefflin teaches a cover for a nipple having a sealing element 43.

Regarding claim 7, note the dome-shaped cover in Fig. 13.

Regarding claim 10, in the very least, the cap in fig. 16 has a different color than the cover (note the cartoon figure).

Regarding claim 4, note the dome-like bottom surface in Fig. 13.

Regarding claim 6, portion 45 is the flange as set forth.

Regarding claim 7, note the dome-shaped cover in Fig. 13.

Regarding claim 10, in the very least, the cap in fig. 16 has a different color than the cover (note the cartoon figure).

Regarding claim 14, note the upper surface is flush with portion 18 in Fig. 17.

Regarding claim 15, note the compressed nipple as shown in Figs. 10, 12 and 13.

It is noted that Shefflin has priority filing dated Oct 14, 1992.

Furthermore, it is noted that it is an intended use to use the apparatus with a nipple such that the bottom surface contact the nipple. The container in Held can be used with a nipple (one with longer tube) such that the lower surface would compress the nipple as claimed.

6. Claims 1-4, 6-8, 11, and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Held (5150801). Held teaches a cover for a nipple having a sealing element as shown in Figs. 12 and 13.

It is noted that it is an intended use to use the apparatus with a nipple such that the bottom surface contact the nipple. The container in Held can be used with a nipple (one with longer tube) such that the lower surface would compress the nipple as claimed.

7. Claims 1-9, 11-13, 15, and 53 are rejected under 35 U.S.C. 102(b) as being anticipated by Bannister et al. (2986296). Bannister teaches a cover and sealing elements 25, 71 in the embodiment of figures 1-12.

Regarding claim 3, note the dome shaped bottom surface at portion 33.

***Claim Rejections - 35 USC § 103***

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Held or Bannister. It would have been obvious to one of ordinary skill in the art to provide the sealing icon with a different color. It would have been obvious to one of ordinary skill in the art to provide the sealing icon with a different color in either Held or Bannister to provide the desired color for the consumers.

9. Claims 16, and 53-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shefflin. Shefflin teaches a cover with the upper surface being flushed with the upper surface as shown in Fig. 17. Furthermore, in Fig. 13, Shefflin teaches a cover with a curvature and the cover compresses the nipple. It would have been obvious to one of ordinary skill in the art to provide the inside surface with a curvature and sized to compress the nipple in Fig 17. to prevent the inside liquid from leaking outside.

Regarding claim 56, Fig. 10 and 13 teaches the sealing flange. It would have been obvious to one of ordinary skill in the art to provide sealing flange in Fig. 17 to provide a sealing mechanism for the cover.

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Regarding claim 59, it would have been obvious to one of ordinary skill in the art to provide the top with a different color for aesthetic reasons.

10. Claims 51, and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Signorini in view of Shefflin. Signorini teaches a baby body, a nipple and a cover, a cap with recesses to accommodate the threads of the handle as shown in Fig. 5A -7. Signorini meets all claimed limitations except for the top with an orifice on the top. Shefflin teaches that it is known in the art to provide a top with an orifice on the top. It would have been obvious to one of ordinary skill in the art to provide a top with an orifice on the top in Signorini as taught by Shefflin to prevent leaking and/or to access the nipple easily.

With respect to the recess for receiving a portion of the handle in a mating relationship, please note that the cap 12 in Signorini mates with handle 24 as shown in Fig. 6. The term "recess" is broad, the inside surface, where the threads 14 is formed, is considered the recess.

Furthermore, the recesses between the protrusions of the threads 14 are also considered as recesses.

With respect to the limitation that the cap screws onto the baby bottle, the cap 12 is indirectly screwed onto the baby bottle. Claim 51 does not require the cap to be directly screwed onto the baby bottle.

11. Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yagi in view of Shefflin, and further in view of Signorini. Yagi meets all claimed limitations except for the sealing element on the top. Either Shefflin or Held teaches that it is known in the art to provide a sealing element on a top of a baby bottle. It would have been obvious to one of ordinary skill in

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the art to provide a top having a sealing element in Yagi as taught by either Shefflin or Held to provide added protection.

With respect to the handle, Signorini teaches that it is known in the art to provide a handle, it would have been obvious to one of ordinary skill in the art to provide a handle in Yagi as taught by Signorini to handle the bottle easily.

With respect to the recess for receiving a portion of the handle in a mating relationship, please note that the cap 12 in Signorini mates with handle 24 as shown in Fig. 6. The term “recess” is broad, the inside surface, where the threads 14 is formed, is considered the recess. Furthermore, the recesses between the protrusions of the threads 14 are also considered as recess.

With respect to the limitation that the cap screws onto the baby bottle, the cap 12 is indirectly screwed onto the baby bottle. Claim 51 does not require the cap to be directly screwed onto the baby bottle.

### ***Response to Arguments***

12. Applicant's arguments with respect to the claims have been considered but they are not persuasive.

This response is made in addition to the response as set forth in previous office action.

Applicant argues that the button being a sealing element which is integrated into the cover. It is noted that the term “integrate” is broadly defined. As noted in Fig. 7 of the present application, applicant's definition of the term “integrate” is that the button 20 is removable. This is exactly what is shown in the various figures of Shefflin and Bannister. It is unclear what is exactly different from the button as claimed and the button as shown in Shefflin or Bannister.

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Furthermore, applicant asserts that the in Shefflin, the liquid can emerge from the nipple. On the contrary, Shefflin numerously teaches the sealing element compressing and sealing the nipple (col. 2, line 51; col. 4, lines 8-13; col. 4, lines 60-65) similar to that of applicant's.

Furthermore, it is noted that applicant's priority back to the provisional application is invalid since the amended claims add functionalities that was not described in the provisional application. These functionalities are what applicant is relying upon as set forth above.

It is further noted that Bannister teaches a button for sealing a cover, and the button is integrated into the cover as claimed.

### ***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (703)308-1038. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (703)308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3579 for regular communications and (703)305-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1148.

Tri M. Mai  
Examiner  
Art Unit 3727



November 20, 2003